

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1202 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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ISMILE IBRAHIM PARMAR

Versus

SECRETARY, GUJARAT ELECTRICITYBOARD

Appearance:

MR DS VASAVADA for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/03/2000

ORAL JUDGEMENT

Learned advocate Mr.Vasavada is appearing for the petitioner. Though served, nobody is appearing for the respondents. The facts of the present case, in short, are tht the petitioner was working on the post of Assistant

Secretary with effect from 7th July, 1980 and according to the petitioner, he was entitled to retire on 28th February, 1992 in the post of Assistant Secretary. It is the contention of the petitioner that considering the award passed by the Industrial Tribunal in Reference (IT) No. 325 of 1981, the petitioner was entitled to retire at the age of 60 years. In the said award, it was directed to the respondent Board to raise the retirement age from 58 years to 60 years. Therefore, it is the contention of the petitioner that he is entitled to retire at the age of 60 years on the basis of the award passed in the said reference. Inspite of that, he has been superannuated at the age of 58 years, on 28th February, 1990 which is illegal and in contravention of the directions given by the tribunal in Reference No. 325 of 1981. Learned advocate Mr. Vasavada has submitted that now this question has been decided by this court as per the decision of this Court in case of GE Board v/s. GE Board Employees' Union reported in 1994(1) GCD 555 (Guj). In the matter of GE Board v/s. GE Board Employees Union (supra), the legality and validity of the award passed by the Industrial Tribunal in Reference No. 969 of 1984 was under challenge before this Court. Copy of the said award has been placed on record at page 19 of the petition. In the said matter, the workman MI Trivedi who was working as Assistant Secretary in the GE Board was directed to be continued upto the age of sixty years. In the said decision, reliance was placed by the tribunal on the decision in award passed in Reference (IT) No. 325 of 1981. This Court has dismissed the said petition and the award passed by the tribunal in case of Shri MI Trivedi has been confirmed. Learned advocate Mr. Vasavada has further submitted that the award passed by the tribunal in reference no. 325 of 1981 was also challenged before this court by the Board in case of GE Board versus GE Board Employees' Union reported in 1993 (1) GLH page 686. This Court has dismissed the petition and has confirmed the award passed by the industrial tribunal in reference (IT) No. 325 of 1981. Thereafter, said decision of the division bench of this Court has been challenged before the apex court and, according to Mr. Vasavada, the apex court has also dismissed the said Special Leave Petition filed by the respondent board. According to Mr. Vasavada, thereafter, the respondent Board has issued the GSO No. 320 dated 10th January, 1994 and has amended the service regulation NO. 72 with a view to enhancing the age of retirement in respect of the employees serving in class II, III and IV categories. Said amendment was carried out with effect from 5th January, 1984. Therefore, according to service regulation 72, (1) employee serving under class II, III

and IV categories is liable to retirement on the date of completiono f sixty years of age unless specifically re-employed by the Board for a specific period; (2) employee serving under class - I category is liable to cmpulsoryretirement on the date ofhis completionof the ageof 58 years unless specifically re-employed by the board for a specific period. All other terms and conditions of service regulation 72 under its proviso were unchanged. Therefore, according to Mr. Vasavada, said service regulation 72 was implemented with effect from 5th January, 1984 and, therefore,n aturally, the petitioner is entitled to continue in service till he reaches the ageof sixty years on the post of Assistant Secretary which is Class-II post and, therefore, according to him, the action of the respondent in retiring the petitioner at the age of 58 years is illegal, arbitrary and bad in law. In view of these facts, the petitioner who was working on the post of Assistant Secretary which is a postof Class II cat egory, the petitioner is entitled to have the superannuation age of 60 years. In view of the decisions of this Court referred to hereinabove, I am of the opinion that this petition should be allowed and therespondent should be directed to continue the petitioner in service as such till he completes the age of sixty years. However, in of the pendency of this petition, the respondents are, therefore, required to be directed to treat the petitioner to have continued in service upto the age of sixty years i.e. 28th February, 1992 and to pay him all the consequential benefits like pay, allowances etc. and to revise the terminal benefits accordingloy.

In the result, this petition is allowed. The respondents are directed to treat the petitioner to have continued in service upto theage of sixty years i.e. 28.2.1992 and to pay him all the wages and allowances accordingly for the said period and also to revise all his terminal benefits accordingly. Rule is made absolute accordingly. There shal be no order as to costs.

14.3.2000. (H.K.Rathod,J.)

Vyas